

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

In the Matter of:

**MARISELA ORNELAS, d/b/a
VISION MOBILE HOME PARK, LLC,**

Respondent.

No.: WQCC 20-_____

**RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER
REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the NEW MEXICO ADMINISTRATIVE CODE, Title 20.1.1.200 (et. seq.)

RESPONDENT VISION MOBILE HOME PARK, LLC, [hereafter, "Corporation"] [hereafter, "Respondent"] a corporation in good standing in the State of New Mexico since 2018, owned by MARISELA ORNELAS [hereafter, "Ornelas"], and note doing business under any name, provides the following answer to the New Mexico Environmental Department's [hereafter referred to as the "Department"] ADMINISTRATIVE COMPLIANCE ORDER REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY and ATTACHMENT 1 PENALTY CALCULATIONS. Caveat: While it is the position of Ornelas that she is not a party and that only the Ornelas Corporation can be a party, in the event that the Ornelas' Corporation's MOTION TO DISMISS, filed concurrently, concerning this party attribution is decided against it, this answer is also on her behalf as the "Respondent". Other than the aforesaid caveat, in this answer, Respondent refers to the Ornelas Corporation only.

ASSERTION OF AFFIRMATIVE DEFENSES FOR ALL ITEMS ""1." THROUGH

"54.""

Respondent asserts the following affirmative defenses as to items 1 through 54 in this answer:

1. Estoppel,
2. Laches,
3. Waiver and
4. Unclean Hands.
5. Generally, the Department knew in many cases that Respondent did not receive documents or that it had received communications from Respondent, the Department asserted it would act in a manner subject to those facts, despite Respondent not knowing the facts as the Department knew those facts and that when the Department acted in facts not known to Respondent, Respondent relied on the Department to its Detriment. All the above acts as affirmative defenses of laches, waives the government's right to issue the order and penalties as indicated and exhibits that the Department had unclean hands in the administration of its duties.

I. FINDINGS OF FACT

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied as to events after September 6, 2018. Respondent owns and operates a Corporation in good standing with the Secretary of State for the State of New Mexico, since its filing date of September 6, 2018 entitled, VISION MOBILE HOME PARK, LLC, which operates the Vision Mobile Home Park, and does not use a d/b/a. As such, pursuant to the MOTION TO

DISMISS [hereafter, “Motion”] on this same issue, filed concurrently, is the only legal party to this matter as to events that follow September 6, 2018.

5. Respondent is a corporate “person” known as a Corporation, that is owned by Ms. Marisela Ornelas [hereafter “ORNELAS”]. ORNELAS is entitled TO ALL THE PROTECTIONS AGAINST LIABILITY THAT ARE PROVIDED BY ACCEPTED FEDERAL AND STATE CORPORATE LAW.

6. Denied. Respondent has not to date received from any lab it has attempted to hire any results indicated that it has or may exceeded the standards of 20.6.2.3103 NMAC. Respondent asserts that it has been compliant to the extent possible. Respondent has not been informed of lab results indicating that its sewer operations have, do or will endanger the public’s safety. Further, if such results were presented it would aggressively seek to be compliant in remedying the matter.

7. Denied. The 10 discharge site(s) are located at 3 Road 6367, 5a Road 6367, 9 Road 6367, 11a Road 6367, 2a Road 6367, 4a Road 6367, 6a Road 6367, 7 Road 6369, 5 Road 6369, 4 Road 6369 - all located in Kirtland, San Juan County, New Mexico.

8. Denied. Since becoming involved with the Vision Mobile Home Park in 2010, Respondent and its predecessor, worked diligently to secure the proper permit and get the sewage system for the park in compliance. As will be shown, Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. Respondent makes an offer of proof to this effect and will in a Supplemental Answer provide further documentation to this effect.

9. Denied. Please see response to “9” above.
10. Admitted.
11. Admitted.
12. Admitted.
13. Denied. Respondent and its predecessor make an offer of proof that it did comply in part. It did send semi-annual reports but could not locate a lab that would prepare both results required. On Monday, February 8, 2021, Respondent is scheduled to receive a lab report and will forward the same to the department when received. Otherwise, as will be shown, Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. Respondent makes an offer of proof to this effect and will in a Supplemental Answer provide further documentation to this effect.
14. Admitted in part and denied in part. On October 29, 2017 – Marisela left for Montrose and despite providing her new address to Department officials, mail concerning any infractions went to the wrong address. A Mr. Thomas Barrows was hired by Ornelas to apply for the renewal of DP-1691. Ms. Ornelas paid for his services and signed the application and was assured it was submitted. During this time, Ornelas and Respondent did sewer maintenance as evidenced by submitted records. Exhibit B, Maintenance Records
15. During the relevant period Ornelas and then Respondent understood that DP-1691 had been submitted. An offer of proof to this effect is made and will be documented in a

supplemental answer. During this time, Ornelas and Respondent did sewer maintenance as evidenced by submitted records. Again, Please See Exhibit B, Maintenance Records.

16. Denied. While the Department may have issued the Notice of Non-compliance, Respondent did not receive it as Respondent had moved to a new address and the mail was still sent to the old address. Further Respondent thought that she was complying. An offer of proof to this effect is made and will be documented in a Supplemental answer.

17. Denied. As indicated in “17” above this issued document by the department was not received by Respondent. Therefore the 15-day response required is moot – should could not reply to what she did not get. When Respondent did receive the Notice of Noncompliance, it hired an individual and paid them \$500 to respond as well as a second individual who was also paid \$500, but both failed to address the problem and did not return her phone calls. An offer of proof to the same effect is made and will be documented in a supplemental answer.

18. Denied. The issue here, is that Respondent did not get Dp-1691 and hence did not know to submit a written plan. She had indicated in conversation that she wanted to continue to use the discharge ponds and that connection was infeasible. But she could not submit a plan for something she did not plan to do, nor did she have the opportunity to dispute the directive to only connect to Valley Sewer. Therefore, the presumption to this effect cannot be held. At no time was there a hearing that she could not use the discharge ponds in compliance or why.

Respondent does intend to request a public hearing to resolve this matter now. In fact, Respondent did not receive such correspondence so the presumption and requirement for her to submit the plan for connection was improper. Respondent spoke to, well after DP-1691` was issued, on information and belief, an employee at the department during which she was told she could only connect to the Valley Sewer system because she had failed to respond to prior

correspondence. Respondent's plan was to maintain the 10 discharge ponds and she indicated well after the DP-1691 was issued, to the same employee that this was her plan and that it was financially infeasible for her to do anything else. An offer of proof is made to this effect and will be documented in a Supplemental Answer.

19. Admitted in part and denied in part. Respondent received the electronic transmission of Condition 10 of DP-1691, but not the correspondence. Respondence did contact the Department. An offer of proof is made to this effect and will be documented in a Supplemental Answer.

20. Denied. Issued and received are different here. Respondent received the Notice of violation dated 7/23/2020 on November 5, 2020. As to infeasibility, in all conversations Respondent has indicated that connection to the valley Sewer is financially infeasible and that her plan was to maintain use of the 10 discharge ponds. An offer of proof is made to this effect and will be documented in a Supplemental Answer.

21. Denied. Respondent's plan was submitted on multiple occasions to employees of the department. In writing it has been described multiple times in this Answer. Further, the connection option for Respondent to her current knowledge is financially infesible. She will attempt to determine the financial feasibility of the same. An offer of proof is made to this effect and will be documented in a Supplemental Answer.

22. Denied. The reports are attached. Please See Exhibit "B"

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II. VIOLATIONS

23. **Violation 1:** Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. **Respondent has on many, many occasions in telephone calls to Department employees indicated her plan and the financial infeasibility of connection to the Valley Sewer System. These efforts cannot indicate willfulness. She does not have control over the event when mail is sent to the wrong address. She has not dismissed directives other than those asserted after deadliness missed that could not have been answered as she had no notice due to those directives not being received. When she has received communication from the Department she has taken efforts to comply, many of which have been thwarted by professionals taking money and not doing services. Finally, there have been no lab results, Respondent is scheduled to receive some Monday, 2/8/2021, indicating that there is a problem with the original leach field, or a that her sewage treatment efforts pose a danger to the public. An offer of proof is made to this effect and will be documented in a Supplemental Answer. Before this or any violation can be determined, Respondent requests a hearing to present the documentation of the offers of proof asserted.**

24. **Violation 2:** Please see Exhibit "B". Additional lab reports are coming 2/8/2021. Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. **Respondent has on many, many occasions in telephone calls to Department employees indicated her plan and the financial infeasibility of connection to the**

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25. Admitted. But, Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. **Respondent has on many, many occasions in telephone calls to Department employees indicated her plan and the financial infeasibility of connection to the Valley Sewer System. These efforts cannot indicate willfulness. She does not have control over the event when mail is sent to the wrong address. She has not dismissed directives other than those asserted after deadliness missed that could not have been answered as she had no notice due to those directives not being received. When she has received communication from the Department she has taken efforts to comply, many of which have been thwarted by professionals taking money and not doing services. Finally, there have been no lab results, Respondent is scheduled to receive some Monday, 2/8/2021, indicating that there is a problem with the original leach field, or a that her sewage treatment efforts pose a danger to the public. An offer**

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III. COMPLIANCE ORDER

30. Neither admitted nor denied.

31. Respondent asks this be adjusted depending on settlement discussions. And again, Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. **Respondent has on many, many occasions in telephone calls to Department employees indicated her plan and the financial infeasibility of connection to the Valley Sewer System. These efforts cannot indicate willfulness. She does not have control over the event when mail is sent to the wrong address. She has not dismissed directives other than those asserted after deadliness missed that could not have been answered as she had no notice due to those directives not being received. When she has received communication from the Department she has taken efforts to comply, many of which have been thwarted by professionals taking money and not doing services. Finally, there have been no lab results, Respondent is scheduled to receive some Monday, 2/8/2021, indicating that there is a problem with the original leach field, or a that her sewage treatment efforts pose a danger to the public.** An offer of proof is made to this effect and will be documented in a Supplemental

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Answer. Before this or any violation can be determined, Respondent requests a hearing to present the documentation of the offers of proof asserted.

36. Submit a plan for connecting to the VWSD sewer to NMED no later than thirty (30) days after this order becomes final. The plan shall include, at minimum, documentation on the funding sought/obtained for connection, a timeline for connection, construction benchmarks to be met, and a protocol for reporting progress toward connection. The timeline in the plan shall have a project completion date of no later than April 8, 2022. If Respondent believes the plan is financially infeasible, Respondent shall provide evidence of hardship in the form of tax documents or other reliable records along with the plan submittal no later than thirty (30) days after this order becomes final.

37. 37. Respondent asks this be adjusted depending on settlement discussions. And again, Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. **Respondent has on many, many occasions in telephone calls to Department employees indicated her plan and the financial infeasibility of connection to the Valley Sewer System. These efforts cannot indicate willfulness. She does not have control over the event when mail is sent to the wrong address. She has not dismissed directives other than those asserted after deadliness missed that could not have been answered as she had no notice due to those directives not being received. When she has received communication from the Department she has taken efforts to comply, many of which have been thwarted by professionals taking money and not doing services. Finally, there have been no lab results, Respondent is scheduled to receive some Monday, 2/8/2021, indicating that there is a**

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38. 38. Respondent asks this be adjusted depending on settlement discussions. And again, Respondent and any predecessor have had difficulties either with its records being acknowledged, mail delivered to the wrong address and delivered well past any dates when statutory liability or presumptions are determined, or professional staff taking compensation to perform all required compliance and then failing to do the same. **Respondent has on many, many occasions in telephone calls to Department employees indicated her plan and the financial infeasibility of connection to the Valley Sewer System. These efforts cannot indicate willfulness. She does not have control over the event when mail is sent to the wrong address. She has not dismissed directives other than those asserted after deadliness missed that could not have been answered as she had no notice due to those directives not being received. When she has received communication from the Department she has taken efforts to comply, many of which have been thwarted by professionals taking money and not doing services. Finally, there have been no lab results, Respondent is scheduled to receive some Monday, 2/8/2021, indicating that there is a problem with the original leach field, or a that her sewage treatment efforts pose a danger to the public.** An offer of proof is made to this effect and will be documented in a Supplemental Answer. Before this or any violation can be determined, Respondent requests a hearing to present the documentation of the offers of proof asserted.

IV. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

39. Respondent Pursuant to Section 74-6-10(G) of the Act, has the right to answer this Order and does hereby request a public hearing.

40. Respondent does as to all items in the findings of fact, items “1.” Through “23”, of the ADMINISTRATIVE COMPLIANCE ORDER REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY and ATTACHMENT 1 PENALTY CALCULATIONS: (a) contest the material and/or legal matter(s) upon which the Order is based; (b) contends that the amount of the penalties proposed in the Order are inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; and (d) otherwise contests the appropriateness of the Order, Respondent may mail or deliver a written Request for Hearing and Answer to the Order to the WQCC, at the following address:

Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Telephone: (505) 827-2425

41. Respondent does file concurrently A Request for Hearing and Answer to the Order within 30 days after Respondent’s receipt of the Order.
42. Respondent attached a copy of this Order to its Request for Hearing and Answer to the Order.
43. Respondent is filing a copy of the Answer and Request for Hearing must also be served on counsel for

NMED at the following address:

Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000

Albuquerque, New Mexico 87102
Email: christopherj.vigil@state.nm.us

44. Respondent understands that: Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Order of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.
45. The Water Quality Control Commission's Adjudicatory Procedures, 20.1.3

NMAC, shall govern the hearing if Respondent requests a hearing.

V. FINALITY OF ORDER

46. Respondent understands that this Order shall become final unless Respondent files a Request for Hearing and Answer to the Order with the WQCC within 30 days of receipt of this Order.

47. Respondent understands that the failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of the Act concerning this Order.

48. Respondent understands that unless Respondent requests a hearing and files an Answer, the penalty proposed in this Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

VI. SETTLEMENT

49. Respondent understands that whether or not Respondent requests a hearing and files an Answer, Respondent may confer with NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the Act and Regulations. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Phone: (505) 383-2060
Email: christopherj.vigil@state.nm.us

50. Respondent understands that settlement discussions do not extend the 30-day deadline for filing of Respondent's Request for Hearing and Answer to the Order, nor alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings.
51. Respondent understands that Respondent may appear at the settlement conference alone or represented by legal counsel.
52. Respondent understands that any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and stipulated final order must resolve all issues raised in the Order, must be final and binding all parties to the Order, and may not be appealed.

VII. COMPLIANCE WITH OTHER LAWS AND WAIVER

53. Respondent understands that compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

VIII. TERMINATION

54. Respondent understands that this Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary approves a stipulated final order.

IX. CONCLUSION

55. Respondent submits this RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY and ATTACHMENT 1 PENALTY CALCULATION in good faith and in an effort to comply with New Mexico Environmental Law and the duties it has therein.

Marisela Ornellas

Digitally signed by Marisela Ornellas

Date: 2021.02.08 15:40:47 -07'00'

Marisela Ornellas, CEO and Board Member
of Respondent: Vision Mobile Home Park, LLC

Date

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021, a true and accurate copy of the Motion to Dismiss was served electronically to email: Pamela.Jones@state.nm.us and to AG Vigil at

ChristopherJ.Vigil@state.nm.us with an additional copy emailed to

ChristopherJ.Vigil@state.nm.us all sent from Ms. Ornellas' email, ehpestates@gmail.com. As

well, the original, signed copy was sent by Certified U.S. Mail to:

Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502

/s/ Charles Patton
Vice President of Compliance
Vision Mobile Home Park, LLC
2091 Locust Road
Montrose, CO 81401

Certificate of Service

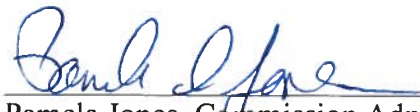
I hereby certify that on February 8, 2021 a copy of the foregoing **document** was emailed to the persons listed below. A copy will be mailed first class upon request.

Christopher J. Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave, NE #1000
Albuquerque, NM 87102
ChristopherJ.Vigil@state.nm.us
Counsel for the New Mexico Environment Department

Marisela Ornelas
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2091 Locust Road
Montrose, CO 81401
312hs7@gmail.com

Robert F. Sanchez
New Mexico Office of the Attorney General
408 Galisteo St.,
Santa Fe, NM 87501
rfsanchez@nmag.gov
Counsel for the Water Quality Control Commission



Pamela Jones, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 660-4305
Email: Pamela.Jones@state.nm.us